IN THE SUPREME COURT OF ESWATINI

Case No.03/2022

HELD AT MBABANE

In the matter between:

ELVIS WILTON PRICE t/a THIRSTY CORNER **Appellant**

And

SWAZILAND PROPERTY MARKET (PTY) LTD **Respondent**

Neutral Citation: *Elvis Wilton Price t/a Thirsty Corner V Swaziland Property Market (PTY) LTD (03/2022) [2022] SZSC 56 (14th November* 2022).

Coram: **M.C.B MAPHALALA CJ, N.J. HLOPHE JA AND M.D. MAMBA AJA (as he then was)**

Date Heard: **10TH OCTOBER 2022.**

Date handed down: **14th NOVEMBER 2022**

SUMMARY

Civil Appeal – Court a quo granted summary judgment against the Appellant in the sum of E30 000.00 although the claim itself was for a sum of E102, 221.32 – Amount for Summary Judgment acknowledged by Appellant in its affidavit Resisting Summary Judgment and in terms of earlier correspondence hence its grant by the Court a quo – Judgment under appeal had been granted extempore – Whether a basis exists for this court to interfere with the judgment of the court a quo – Different types of Court orders discussed – Orders sounding in money distinguished from those compelling a party to do an act – The latter orders enforceable through contempt unlike the former ones which are enforceable through attaching a party's assets for sale in execution to recover the amount owed – Whether the Court a quo entitled to grant the order it did.

JUDGMENT

HLOPHE J

[1] On the 10th December 2021 the High Court (the Court *a quo*), per Justice T.L. Dlamini J, issued an order granting a Summary Judgment application in the sum of E30 000.00 to the Respondent who was the Plaintiff at the time. The

Summary Judgment in question was granted *ex tempore* during an uncontested motion sitting and therefore no reasons for it were given in the form of a fully-fledged judgment.

[2] It is not disputed that when the action proceedings were commenced, the Respondent's claim in the particulars of claim was for a sum of E101 221.32, allegedly arising from arrear rentals owed by the Appellant. After the Appellant had entered a Notice of Intention to defend the proceedings, the current Respondent filed a summary judgment application contending therein that the Appellant had no defence to the plaintiff's claim and that the appearance to defend had been filed merely for purposes of delay.

[3] In his affidavit resisting summary judgment, the Appellant said the following at paragraph 6:-

> *"It is my humble submission that the calculations are not correct and the attachment is of plaintiff's own making. It does not show the true reflection of the amounts paid by me. According to my calculations, I am only owing about E30 000.00 (Thirty Thousand Emalangeni). I cannot verify this amount though because I am still looking for my receipts".*

[4] The foregoing excerpt from the Affidavit Resisting Summary Judgment, which was deposed to on the 5th August 2021, was echoing what the Appellant

had stated in an earlier letter dated the 12th May 2021. This letter bore the title: **"Request For Your Indulgence"**. The Appellant therein said the following at paragraphs 3 and 4:-

> *"3. In that regard, since it is Common cause that we are in arrears, we request that our total arrears amount be reviewed with the hope of reaching a reduced amount primarily because it is also common cause that we have been out of business for the entire duration of the arrear months.*
>
> *4. We are willing to pay E30 000.00 (Thirty Thousand Emalangeni) as full and final settlement payment after which the lease agreement will be revived and we commence paying as normal" (Underlining has been added).*

[5] A brief comment to the Appellant's contention with regards the sum of E30 000.00 (Thirty Thousand Emalangeni) as borne out in the two foregoing paragraphs is that it was indicating that same was the sum the Appellant acknowledged he was owing to the Respondent arising from arrear rentals. That he chose to make it ambiguous in the affidavit resisting summary Judgement does not assist him in my view. He was there required to set out a *bona fide* defence. Once he had voluntarily said that according to his calculations he was owing about E30 000.00 (Thirty Thousand Emalangeni) when in an earlier letter he had said he was willing to pay E30 000.00 including his having already acknowledged that he was in rental arrears in the same letter; there can be no doubt he, at least to the extent of the sum of E30 000.00, had no defence to the Plaintiff's claim and could not avoid a judgment

being entered against him, at least to the extent of the acknowledged indebtedness in a summary judgment matter.

[6] In terms of rule 32 (4) (a) the High Court may grant Summary Judgment to the full claim or to a part of the claim. In the matter at hand there can be no question that the Court *a quo* was entitled to grant Summary judgment with regards the part of the claim acknowledged as owing by the Appellant, hence the judgment in the sum of E30 000.00 (Thirty Thousand Emalangeni) which is the admitted part of the full claim of E102 221.32 (One Hundred and Two Thousand Two Hundred and Twenty One Emalangeni, Thirty Two Cents).

[7] Although it is not abundantly clear what exactly happened leading to the grant of the Summary Judgment in view of the conflicting accounts in that area, it cannot in my view defeat the fact that the Court *a quo* was entitled to enter Summary Judgment in favour of the Respondent as plaintiff for the reasons set out above. It was in fact common cause during the hearing of the appeal before us that on the day the summary judgment was granted, the Respondent as plaintiff, and after all the papers which included the application for Summary Judgment, the affidavit Resisting Summary Judgment and the Replying Affidavit, had been filed, set the matter down before the Uncontested Motion Court Roll of the 10th December 2021and thereat sought the following reliefs;

> *"1. Directing the Defendant to pay the Plaintiff the sum of E30 000.00 (Thirty Thousand Emalangeni) it admits to be owing in its Affidavit resisting summary judgment.*

2. *That the Defendant returns the keys of the premises, previously occupied by him, being Shop No.3, situated on stand No.110 Ilanga Centre Building, Martin Street, Manzini in the Manzini District."*

[8] It is important to record that *ex facie* the papers filed of record, the above cited notice was a second such notice. The first similar notice was meant for the 5th November 2021. It was argued before us without it being disputed, that on the said date the matter could not be proceeded with because counsel for the Respondent was not in attendance. It was removed from the roll. It was subsequently set down by Respondent's counsel for the 10th December 2021 by means of the Notice of Set down referred to in the foregoing paragraph.

[9] It was again argued that the Court *a quo* per Judge T.L. Dlamini, heard the matter in the uncontested Motion Court Roll of the said date in the absence of counsel for the Appellant and granted it as prayed for in the Notice of Set Down referred to above. In other words the Court *a quo* granted not only the summary judgment in the sum of E30 000.00 as prayed for but also granted prayer 2 thereof which was ordinarily not part of the summary judgment sought but was more about directing the Appellant to return the keys of the premises previously occupied by him as described in prayer 2 of the Notice of set down cited above. The order granted by the Court *a quo* was uplifted and served on the Appellant. The Appellant did not pay the judgment debt upon being served with the Court Order. He also did not hand over the keys to the premises in terms of order 2 arising from prayer 2 of the Notice of

Set Down referred to above. This execution, it is not in dispute, was carried out on the 21st December 2021.

[10] On the 10th January 2022, The Appellant noted an appeal against the order issued by the Court *a quo* on the 10th December 2021 and executed upon by the Deputy sherif on the 21st December 2021. The grounds for the appeal were set out as follows:-

1. *The learned Judge erred in law and in fact by granting an order that Appellant pays the sum of E30 000.00 (Thirty Thousand Emalangeni) to the Respondent when the matter was ripe for hearing of arguments for the Summary Judgment application. The Appellant had filed a Notice to oppose such order (Notice dated 08th December 2021) and the matter ought to have been referred to the Contested Roll.*

2. *The Learned Judge erred in law and in fact by ordering that the Appellant should return the keys when there was no jurisdiction for such order in that there was neither an affidavit nor particulars accompanying (such an application).*

[11] In his argument the Appellant's counsel Mr Nzima expanded briefly on his grounds of appeal contending mainly that the Court *a quo* had not taken cognizance of the fact that he had filed a Notice of intention to oppose the reliefs sought per the Notice of Set Down captured above which he claimed necessitated that he be heard. By so hearing the matter he contended the Appellant was denied an opportunity to be heard. He argued he was not in

Court because he had expected the matter to serve before Justice N. Maseko's Court on the motion court day concerned only for it to serve before Justice TL Dlamini's Court. It was improper, he argued, for the Court *a quo* as constituted to hear the matter and grant the order it did without having heard the Appellant who had allegedly indicated his desire to be heard through the notice of intention to oppose he had already filed.

[12] On the question of the 2nd order to the Notice of Set Down referred to, that is the order directing him to hand over the keys, he argued that over and above the fact that he had also not been heard before its grant, the Court *a quo* allegedly had no jurisdiction to hear it. He contended that there had not been facts accompanying it. Of course the undeniable facts of the matter were simply that whereas the Appellant had vacated the premises since the commencement of proceedings in Court, he had left with the keys and had refused to hand them over. He otherwise had no right to hold over the keys after he had breached the agreement. I must say that the factual accuracy of these contentions was not disputed and no issue was in fact taken with them during the hearing of the appeal.

[13] For its part the Respondent denied any wrong doing in the setting down of the matter before court for it to result in the order appealed against. The issues forming the prayers eventually granted by the Court *a quo* had been concisely set out in the Notice of set down concerned. The said notice, it was argued, had been served on the Appellant who however chose not to be in attendance during its hearing in court, hence the order sought was granted unopposed

after the Court *a quo* had fully applied itself in particular with the appellant having already acknowledged its indebtedness in the sum of E30000.00. As a result of that acknowledgement it followed that the Appellant had no defence. He had indeed expressed his willingness to pay the amount he had acknowledged as due. He therefore had no defence to the extent of that amount and the Court *a quo* had to grant Summary Judgment. There was therefore no fault on the Court *a quo* ordering the appellant to pay the sum stated above.

[14] As regards the return of the keys, it was argued that it could not be disputed that the Appellant who had allegedly breached the lease agreement was no longer in occupation of the leased premises, although it was inexplicably still keeping the keys. The argument as I understand it was that it could not be opened to the Appellant in those circumstances to pray for the retention of the keys concerned.

[15] The Respondent argued further, and as a point of law, that since the appellant had refused to, among other things, hand over the keys when it was served with the Order of Court, he was in that way in contempt of the Order of Court. It was argued further, he for that reason could not be allowed in law to bring the appeal in this matter as that was tantamount to him failing to respect the processes of the Court when it placed obligations on him. It was noteworthy though, that whilst he did not want to respect court orders directed against him, he did expect the court to come to his rescue when his own rights were being infringed. In that sense, it was argued, the Appellant was not

approaching the Court with clean hands, which allegedly necessitated the application of the so called "clean hands" doctrine.

[16] That doctrine was expressed in the following words in **Mulligan V Mulligan 1925 WLD 164** and in **Photo Agencies (PTY) LTD VS The Royal Swaziland Police & Another 1979 -76 SLR** 398 where it was applied:-

> *"Before a person seeks to establish his rights in a Court of law, he must approach the Court with clean hands; where he himself, through his own conduct makes it impossible for the processes of the court (whether civil or criminal) to be given effect to, he cannot ask the Court to set its machinery in Motion to protect his civil rights and interests...were the court to entertain a suit at the instance of such a litigant it would be stultifying its own processes and it would, moreover be conniving at and condoning the conduct of a person who, through his flight from justice, sets law and order in defiance. See also:* ***S v Nkosi 1963(4) SA 87 (T)*** *as well as* ***The Attorney General V Ray Gwebu and Another High Court Civil Case Number 3699/2002.***

[17] The starting point would therefore be a determination whether the Appellant was or is in contempt of Court. It is clear from the facts as referred to in argument that the contention of or conclusion whether one was in contempt of Court is based on the fact that whereas the order of Court was undeniably served on the Appellant on the 21st December 2021, it was not appealed against until the 10th January 2022. The argument is therefore that between these dates the Appellant was in contempt of Court as no Appeal had been

noted during that period. Of course the order sought both the payment of the sum of E30 000.00 and the return of the keys of the premises to the Respondent. Are both these orders enforceable through contempt of court in the case of non – compliance?

[18] It is not every order whose failure to comply with, exposes a party to being held to be contemptuous of the Court that issued it. This is because the law distinguishes Orders that are *ad factum praestandam and orders that are ad pecuniam solvendam*. The first species of orders - that is orders that are *ad factum praestandam* – are also referred to as orders calling for one "to do some act" whilst the second species of orders – orders that are *ad pecuniam solvendam* – also known as orders sounding in money – are enforced through attachment of a defaulting party's assets for them to be sold in execution so as to realize the outstanding amount for liquidating the debt.

[19] On the distinction between the two orders; **Herbstein and Van Winsen** in their book, The civil Practice of The Supreme Court of South Africa, Fourth Edition, Juta and Company, at page 754 starts of by saying the following:-

> *"Execution may be effected against the property or the person of the judgment debtor, the appropriate manner of execution in a particular case depending upon the type of judgment and the nature of the debtor's available assets. Thus a judgment sounding in money is enforceable by the attachment and sale in execution of the debtors property, movable, immovable or incorporael. "*

[20] On the judgment or order *ad factum praestandam* the celebrated authors said the following still at page 754:-

> *"A judgment ordering the debtor to do or to refrain from doing an act is enforceable against the person of the debtor by way of committal for contempt of Court, not by execution against his property" See also* ***Jeanes vs Jeanes and Another 1977(2) SA 703 (w).***

[21] Concerning the order issued by the Court *a quo* on the 10th December 2021 and sought to be enforced through the execution that took place on the 21st December 2021, there can be no doubt that as concerns the payment of the sum of E30 000.0 such was an order ***ad pecuniam solvendam*** or an order sounding in money. That order is in law enforceable through an attachment and sale in execution of the judgment debtor's property, movable, immovable or incorporeal. With regards the second order, which in the context of this matter is the one that called on the appellant to hand over the keys of the premises in dispute to the Respondent; such was an order which called upon the former to do an act – (the handing over of the keys to the Respondent). It is in that sense an order Ad ***factum praestandam***, which is an order that called upon the Appellant "to do some act". This latter order unlike the first one, is enforceable by means of the contempt of Court procedure spelt out above, which is effectively by means of an order that seeks to commit the person refusing to comply therewith to prison for a period considered appropriate.

[22] It follows that whatever the situation, the Appellant could never be held to be in contempt of Court for a failure to comply with the Order calling upon him

to pay Respondent the sum of E30 000.00. The issue of the Appellant having approached the Court with "dirty or unclean hands" by falling to pay the sum of E30 000.00 does not therefore arise. The first order which called upon the Appellant to pay Respondent the sum of E30 000.00 is in other words not enforceable through the party concerned being held in contempt of Court. Put differently a party cannot be construed to be in contempt of Court simply because he failed to pay a debt.

[23] Loosely speaking the same thing cannot be said, in the context of this matter, of the order calling upon the Appellant to hand over the keys of the premises to the Respondent. That order calls upon the Appellant "to do an act" and is ordinarily enforceable by him being held to be in contempt of Court if he fails or refuses to comply with the order unless there is some legal justification for him not to have complied with such an order. For such a party to be heard if he brings such proceedings, he is required to first purge his contempt by complying with the order of Court he earlier refused or failed to comply with.

[24] Although the Appellant failed to return the keys immediately upon being served with the Court Order on the 21st December 2021, it seems to me that it has to be taken into consideration that his failure to comply was only limited to a few days in December, considering that on the 10th January 2022, he noted an appeal to this Court. A salutary rule of practice in this jurisdiction is that the noting of an appeal stays execution of an order of Court which is to say that as soon as the appeal was noted, it had the effect of suspending execution.

See in this regard the Judgment in **South Cape Corporation (PTY) LTD VS Engineering Management Consultants 1977 (3) SA 534 (A).**

[25] I referred to the period of the year - around the 21st December 2021 – when the order was served on the Appellant, for the simple reason that in terms of the Rules of the High Court whose order was being executed – particularly the proviso to rule 26 of the said Rules - the period between the 16th December and 7th January of each year is taken not to be Court days. This means that during the said period, the days between the said dates do not count for purposes of Court days. In this sense, therefore even if it were to be argued that between the 21st December 20221, and the 10th January 2022, the Appellant was in contempt, this period in reality and in the context of the facts of this matter, should be taken to have ameliorated the unfavorable construction the law would reach against him. It is a fact that an appeal was eventually noted to bring about the result that the Respondent was clearly not in contempt, from that date. I am not here amending the practice of the High Court to suggest a rule of thumb that parties would be entitled not to comply with orders of Court within the period determined by the Rules as not court days, but I am saying for purposes of the matter at hand, we are prepared to relax the requirement for complying with the court order in question during that period owing to the peculiar facts of the matter. In particular there is the reality, that no prejudice was suffered during the period in question. Further still, I cannot lose sight of the fact that after the order was issued, the Respondent was entitled to some 4 weeks to decide whether or not to appeal it in terms of the practice in this jurisdiction. It is also arguable the Appellant

was entitled not to immediately comply with the order if he was in that period deciding whether or not to take the matter on appeal.

[26] We are therefore willing to take a pragmatic view of the matter and say that in so far as the Appellant managed to appeal the order in question soon after the opening of the legal year in 2021, we cannot find that there was such non-compliance with the order of Court so as to result in the Appellant being held to be in contempt of Court on that score . The situation was put beyond doubt after the 10th January 2022, When the Appellant noted an appeal. This was because as from that date, there was no duty on the Appellant to comply with the Court Order until the appeal was heard. As indicated above, the position of our law is that the noting of an appeal stays execution of an order of Court. See the judgment in **South Cape Corporation (PTY) LTD Vs Engineering Management Consultants 1973 (3) SA 534** -. This position means by extension, that the contention by the Respondent that the Appellant was in contempt of Court and by further extension that he was approaching the Court with dirty hands, cannot be correct on the facts.

[27] As soon as an appeal had been noted, it was incumbent upon the Respondent if he felt the need to execute the order irrespective of the noted appeal, to apply to the Court *a quo* for leave to execute that order, notwithstanding the appeal. Since this was not done, the Appellant cannot be faulted for not having complied with the order whilst awaiting the outcome of the Appeal. Consequently it cannot be correct to say that the Appellant needed to purge his contempt as there was no contempt to purge in the facts of the matter.

[28] This takes me to the merits of the appeal, which are embodied in the two grounds of the notice of appeal. The first ground is that the Court *a quo* erred in law by granting an order that Appellant pays a sum of E30 000.00 (Thirty Thousand Emalangeni), to the Respondent when the matter was ripe for hearing of argument for the summary judgment application. It was argued further that the Appellant's contention was strengthened by the fact that a notice of intention to oppose the grant of the order was filed necessitating that the Appellant be heard allegedly as a contested matter and not as an uncontested one.

[29] The matter had apparently been set down before the uncontested motion roll because the Appellant had indicated at least on two different occasions that his indebtedness to the then Applicant (now the Respondent) was limited to a sum of E30 000.00 which the Appellant had in his papers indicated he had no defence to. Otherwise his being indebted to the said Applicant had, as shown earlier on above, been confirmed in two documents which formed part of the material before the Court *a quo*. As can be seen, this was in both the letter written by the Appellant pleading for an indulgence from the Respondent and also in the Affidavit resisting summary judgment which are both captured fully above.

[30] Whereas the setting down of the matter for the relief sought therein was an unusual step, there was nothing wrong in its essence which was merely about a confirmation that there was no defence to the extent of the indebtedness acknowledged in the papers before that Court. That the Appellant had filed a

notice to oppose in such circumstances could not in my view prevent the Court *a quo* from dealing with the matter particularly because at the time the Court did so it was unaware why Appellant's counsel was not in Court. It cannot be denied that the rules of court do not provide for the filing of a notice of intention to oppose a Notice of set down filed by a party. Such matters are dealt with in terms of both parties appearing in Court for each one to state his attitude to the matter in question before the presiding Judge decides on a way forward. What should have happened once that notice had been filed and served on the Appellant, he was required or obligated to attend Court and advance his attitude to the matter set down thereat for the Court to decide if they could not agree on a common position for recording by the Court.

[31] In so far as the Appellant failed to attend Court (for whatever reason), on the day concerned, and in so far as the issues raised in the notice of set down were crisp on their face, I do not see how the Court can be faulted for having entered the order or judgment it did. In fact I cannot understand why the Court *a quo* would be faulted for having entered a judgment for the amount acknowledged as owed by the Appellant. It is not unthinkable for a Court to grant summary judgment in the absence of the Defendant, except that he has redress if aggrieved. This redress is expressed in one of the applicable rules governing Summary Judgment namely Rule 32 (11).

[32] That Rule provides as follows:-

"Any judgment given against a party who does not appear at the hearing of an application under sub-rule (1) or sub-rule (6) may be set aside or varied by the Court on such terms as it thinks just"

It cannot be in doubt today that one of the remedies contemplated by the said Rule as opposed to a variation is a rescission of the judgment complained of. The South African judgment in **Nyingwa VS Moolman N.O. 1993 (2) 508 (TK)** and the local one of **Learnard Dlamini Vs Lucky Dlamini High Court Civil Case No. 1644/1997,** are on point here as they were both against summary judgments granted in the absence of the defendants. In both matters the High Court came to the conclusion that the remedy contemplated by the rule in each case was rescission on the basis of the common law.

[33] Whereas the Appellant here complains of the matter having been heard in his absence, and therefore according to him, without him being given a hearing, the Appellant decided not to utilize this rule which was the most obvious one to utilize because if he was correct, it would have resulted in the rescission of the judgment with a concomitant reopening of the matter to allow him the opportunity he complains he was not given in the court a quo to advance his case. It is a fact that instead of taking this prima facie beneficial route to him, the appellant went for the obscure option in the circumstance of the matter, namely, the noting of an appeal. It could be that the answer is not difficult to fathom though why he chose that route. Given the acknowledgement of liability up to a sum of E30 000.00, it was unlikely for him to have succeeded in having the order set aside and/or rescinded.

In the judgment of **Leonard Dlamini vs Lucky Dlamini High, Court Case No. 1644/1997,** it was stated that for such a judgment to be rescinded, the Applicant had to give a reasonable and acceptable explanation as well as establish a bona fide defence to succeed. A bona fide defence would not avail the Appellant if he had already acknowledged his indebtedness to the Respondent in the amount for which summary judgment was granted by the Court *a quo.*

[34] It is clear the Appellant could not avail a valid or bona fide defence to get the judgment rescinded. It is tempting to construe that this was the reason why he then would not seek to rescind or set aside or vary the judgment in question. The question is, if he could not meet the requirements for a rescission, did he have a choice to then note an appeal. *Prima facie* I have to say I do not think so. The simple rule is that an appeal is preserved for those matters where the judgment or order complained of was final and definitive. If the matter was heard in his absence and without more and with an order being entered against a party, that is more a matter heard on a default basis than its merits and therefore the judgment cannot be said to be final and definitive. The same thing may not be said though of a matter where even in the absence of the other party, the Court granted judgment after having heard argument including after having considered evidential material before it because in that case the judgment would have been on the merits and after the court would have applied itself fully thereto. See in this regard the judgment in **The Government of the Kingdom of Swaziland V Atlas Investments (PTY) LTD, High Court Civil Case No. 1955/99.**

I must however make myself clear that since this issue was not argued before us, with the matter having been taken to be appealable, I would say I do not need to decide this question and my comments relating thereto are merely *obiter*.

[35] The point is, whatever the merits or demerits of bringing the matter before this Court, it cannot be denied that the Appellant had of his own accord declared twice that he had no defence in the matter for at least up to a sum of E30 000.00 hence the order by the Court *a quo*. In that sense he could not challenge the order of the Court *a quo*, which cannot be faulted, whether he had chosen to appeal or rescind the judgment or order concerned.

[36] On the ground that the Court *a quo* erred in law and in fact by ordering that the Appellant should return the keys when this Court had allegedly no jurisdiction for such an order, in as much as there was allegedly neither an affidavit nor particulars accompanying such a prayer, I cannot agree with such a contention. It cannot be denied in this matter that by admitting that he was in arrear rentals of at least E30 000.00, the Appellant indirectly admitted that he had breached the lease agreement. It made it worse that he could not dispute that he was no longer occupying the premises at the time. If it was so, I cannot understand why the order directing the Appellant to return the keys for the house he had vacated after admitting he had breached the agreement allowing him to occupy it to the point of vacating it, can be found to be improper in the peculiar circumstances of the matter.

relief in the circumstances of the matter and as can be seen from the Notice of Set Down complained of, it makes it worse that the Appellant had no valid reason for retaining the keys to the premises she was not paying rent for and was admittedly in rental arrears as the matter was being considered. To find otherwise, I want to believe, would have amounted to putting substance over form.

[38] In the final analysis I agree that a case has not been made to overturn the judgment of the Court *a quo* which I find to be impeccable. For that reason the appeal is dismissed and the Appellant is to pay costs.

N.J. HLOPHE

JUSTICE OF APPEAL

I Agree

M.C.B. MAPHALALA

CHIEF JUSTICE

I Agree

M.D. MAMBA

ACTING JUSTICE OF APPEAL

For the Appellant: Nzima And Associates

For the Respondent: M. J. Hillary Attorneys